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Amendment
Attorney Docket No. S63.2Q-13017-US04

Remarks

In the Final Office Action of May 27, 2005 claim 66 was rejected under 35 U.S.C. §112, first paragraph; claims 31-32, 40-46, 66-68 and 76 were rejected under 35 U.S.C. §112, second paragraph; and claims 31-32, 40-41, 43-46, 66-68 and 76 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 5,725,547 to Chuter. The Office Action also required cancellation of claims 16-30, 33-39, 47-65, and 69-75 as a result of a previous restriction requirement.

The following comments are presented in the same order and with paragraph headings corresponding to the Final Office Action.

Claim Rejections – 35 USC §112, First Paragraph

In the Final Office Action claim 66 was rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Specifically, the phrase "at least one helical elevation pattern" is alleged to be "new matter." The applicant respectfully disagrees with this characterization, but is willing to delete this phrase from the claim.

Accordingly, the present amendment removes the phrase, replacing it with "a helical elevation pattern" for consistency with other claims defining that feature, e.g. claim 42.

It is also noted that the concept of a helical elevation pattern is fully described in the specification as originally filed. For example: in the third full paragraph of page 4, of the originally filed application, elevations formed in helical patterns on the tubular wall of the stent are described. FIGs. 1 and 2 also clearly depict a helical elevation pattern. These figures and the helical pattern of elevations 7 are fully described in the last paragraph of page 6 of the originally filed Application.

Claim Rejections – 35 USC §112, Second Paragraph

In the Final Office Action claims 31-32, 40-46, 66-68 and 76 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite.

Specifically, use of the word "pitch" in independent claims 31, 43 and 66 is said to be in conflict with dependent claim 34 and certain other dependent claims which, as confirmed

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by the Examiner in the present action, are claims 39, 49, 71 and 75. The rejection however is rendered moot as claims 34, 39, 49, 71 and 75 have been cancelled in accordance with the Examiner's instruction regarding the election of species discussed below.

Claim Rejections – 35 USC §102

In the Final Office Action claims 31-32, 40-41, 43-46, 66-68 and 76 were rejected under 35 U.S.C. § 102(e) as being anticipated by Chuter.

The description of the Chuter patent provided in the previous (March 2005) amendment is incorporated by reference herein. The accompanying reasons in the previous amendment, distinguishing various claims from the Chuter reference, are hereby reasserted.

Independent claims 31 and 43 have been amended to more clearly provide that each of the first pitch and the second pitch is substantially constant. This serves to clarify and emphasize a substantial departure from the Chuter patent.

With respect to independent claim 66, it is emphasized that a "helical elevation pattern" is feature distinguishable from an "elevation" as described in the specification (see for example the bottom paragraph of page 6). Claim 66 clearly defines the prosthesis as incorporating elevations arranged in a helical elevation pattern on the tubular mesh wall. It is the elevation pattern - not an elevation - that is claimed as "helical."

The examiner relies on Chuter's alleged disclosure of "an elevation 24," stating with respect to claim 66 that "one can select a wall segment such that the elevation 24 is 'helical' relative to the selected segment." (action, p. 5).

This both ignores and contradicts the teachings of Chuter. Note that the Chuter specification teaches that multiple individual stent limbs "define a series of rings of transversely oriented sections (24) and longitudinally oriented sections (26)." (col. 4, lines 63-64, emphasis added). See also Figure 1. Nowhere does Chuter teach or suggest that a wall segment can be chosen to provide a helical elevation, as the Examiner has asserted.

In summary, with the specific reference to the examiner's argument, claim 66 is patentable over Chuter because there is no manner of selecting a wall segment of the Chuter device which would yield a helical elevation; and more significantly, even if there was it would still only result in the formation of an elevation that is helical as opposed to the helical elevation

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pattern as recited in the instant claims.

Thus, in light of the above the §102 rejection based on Chuter is respectfully traversed.

Election/Restriction

As required in the Final Office Action Applicant has cancelled claims 16-30, 33-39, 47-65 and 69-75 without prejudice or disclaimer. Applicant reserves the right to pursue these claims or equivalents in a separate application.

Conclusion

Based on at least the foregoing amendments and remarks, Applicant respectfully submits this application is in condition for allowance. Favorable consideration and prompt allowance of claims 31-32, 40-46, 66-68 and 76 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: 12/23/05

By: _____

James M. Urzedowski
Registration No.: 48596

6109 Blue Circle Drive, Suite 2000
Minnetonka, MN 55343-9185
Telephone: (952) 563-3000
Facsimile: (952) 563-3001

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